

BEFORE THE  
BOARD OF REGISTERED NURSING  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

TERISHALEN WILLIAMS-JOHNSON  
5537 Marburn Ave  
Los Angeles, CA 90043

Registered Nurse License No. 607767

Respondent.

Case No. 2012-473

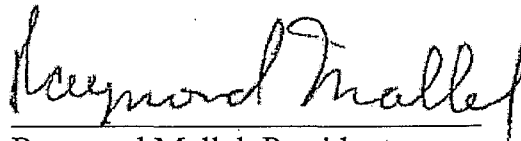
OAH No. 2012040044

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Registered Nursing as its Decision in the above-entitled matter.

This Decision shall become effective on January 2, 2013.

IT IS SO ORDERED this 3rd day of December, 2012.



Raymond Mallel, President  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California

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**PROPOSED DECISION**

Administrative Law Judge Howard Posner, Office of Administrative Hearings, State of California, heard this matter in Los Angeles, California on August 20, 2012.

Deputy Attorney General Randy Mailman of the California Department of Justice represented Complainant Louise Bailey, interim Executive Officer of the Board of Registered Nursing, Department of Consumer Affairs (Board).

Respondent Terishalen Williams-Johnson did not appear at the hearing, and no one appeared on her behalf.

Oral and documentary evidence was received and the matter was submitted August 20, 2012.

The Board brings this Accusation to revoke Respondent's license as a registered nurse. For the reasons set out below, the license is revoked.

**FACTUAL FINDINGS**

*Jurisdiction*

1. Complainant brings this Accusation in her official capacity.
2. Respondent has been a registered nurse (license number G 607767) since October 4, 2002. Her license expired July 31, 2012. On February 22, 2012, the Board brought this Accusation to revoke her license, and respondent timely requested a hearing.

3. On February 22, 2012, the Board served the Accusation, a Request for Discovery, blank Notice of Defense, and copies of Government Code sections 11507.5, 11507.6 and 11507.7 on respondent at 5537 Marburn Avenue, Los Angeles, California 90043. On March 7, 2012, respondent returned a Notice of Defense that listed her address as 5537 Marburn Avenue in Los Angeles. On June 12, 2012, the Attorney General's office served a notice of hearing on respondent at the Marburn Avenue address, informing her that the hearing would be on August 20, 2012 at 9 a.m. Service of the Accusation was thus properly made under Government Code section 11505, and service of the Notice of Hearing was properly made under Government Code section 11509. Respondent did not appear, and the hearing proceeded in her absence.

#### *Possession of a Controlled Substance*

4. On September 24, 2010, respondent was arrested for possession of methamphetamine. According to the hearing testimony of arresting officer John Calderon, respondent and a companion were using methamphetamine in respondent's car, which was parked in front of the Sprint store at the corner of Raymond Avenue and Colorado Boulevard, a retail area in Old Town Pasadena. Respondent admitted to the arresting officers that she possessed methamphetamine, was about to use it on September 24, 2010 when the police arrived, had used it the previous night and was a methamphetamine addict.

5. As a result of the September 2010 arrest, on February 18, 2011, respondent pleaded no contest to possession of a controlled substance in violation of Health and Safety Code section 11377, subdivision (a). The court found there was a factual basis for the plea. The court minutes say, "The Court finds the defendant guilty," but defendant was not convicted. Instead, the court ruled, "If defendant completes 30 AA [Alcoholics Anonymous] meetings and has no new violations of law, People will allow defendant to withdraw plea and dismiss case." On April 8, 2011, the court acknowledged "proof of completion of 30 AA meetings" and dismissed the sole count in furtherance of justice under Penal Code section 1385.

6. Other than respondent's completing the required AA meetings and the dismissal of her criminal case, there was no evidence of mitigation or rehabilitation.

7. The Board has requested prosecution costs of \$1,997.50, based on 5.75 hours of attorney time at \$170 per hour and 8.5 hours of paralegal time at \$120 per hour. This amount is reasonable.

#### LEGAL CONCLUSIONS

1. Business and Professions Code section 2764<sup>1</sup> provides that the lapsing of a

<sup>1</sup> Statutory references are to the Business and Professions Code, unless otherwise stated.

license does not deprive a board of jurisdiction to discipline that license. Under section 118, the Department has jurisdiction to discipline respondent's license, notwithstanding its expiration, for as long as respondent has the right to renew it; she has the right to renew her license within eight years of its July 31, 2012 expiration. (§ 2811, subd. (b).)

2. As paragraph 16 of the Accusation alleges, cause exists to suspend or revoke respondent's license under section 2761, subdivision (a), which provides that a license may be disciplined for unprofessional conduct, and section 2762, subdivision (a), which provides that a licensee's possessing a controlled substance without authorization is unprofessional conduct. Respondent admitted to the police that she possessed methamphetamine, a controlled substance. Paragraph 18 of the Accusation alleges, "Respondent is subject to disciplinary action under sections 2761, subdivision (a) and (d), on the grounds of unprofessional conduct, in that Respondent committed acts of unprofessional conduct, and acts that violated the Nursing Practice Act." (§§ 2700-2838.4.) This allegation is unclear, but it appears to be another way of saying that respondent is subject to discipline for unprofessional conduct consisting of methamphetamine possession. Section 2761, subdivision (a) provides for license discipline for unprofessional conduct, but section 2761, subdivision (d) does not deal with unprofessional conduct; rather, it but provides for license discipline for violating "any provision or term of this chapter [the Nursing Practice Act] or regulations adopted pursuant to it." Paragraph 18 does not allege violation of some other part of the Nursing Practice Act as a ground for discipline. If its point is to allege that respondent violated the Nursing Practice Act through unprofessional conduct as defined in section 2762, subdivision (a), then paragraph 18 adds nothing substantive to the allegations in paragraph 16.

3. Paragraph 15 of the Accusation alleges that cause exists to suspend or revoke respondent's license under California Code of Regulations title 16, section 1444,<sup>2</sup> which provides, "A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare." Because possession of methamphetamine is unprofessional conduct for a nurse, it must necessarily be substantially related to a nurse's qualifications, functions or duties. But there appears to be no provision for license discipline for a substantially-related act that does not involve a criminal conviction. Section 2761, subdivision (f) provides for discipline for a "[c]onviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse[.]" The Board's Recommended Guidelines for Disciplinary Orders and Conditions of Probation (Guidelines), which are to be considered in disciplinary actions (CCR § 1444.5), repeat the same wording on page 5. It is only when they deal with denying an application for a license that the Guidelines mention crimes "or acts" which are substantially related. (Guidelines, pp. 32, 34, 35.) Therefore a substantially related act that does not result in a conviction, while cause to deny a license, is not an independent ground to revoke one.

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<sup>2</sup> Further references to title 16 of the California Code of Regulations are cited as "CCR."

4. Paragraph 17 of the Accusation alleges that respondent is subject to disciplinary action under CCR section 1444, subdivision (c) because she "committed an act that involved dishonesty, fraud or deceit." The only act alleged is possession of methamphetamine, which did not involve fraud or deceit, and was dishonest only in the sense that any violation of the law is dishonest. If CCR section 1444, subdivision (c) were meant to include any violation of the law in a broad definition of "dishonesty," the regulation would be unnecessary and duplicative. But even if there were an act of dishonesty alleged, CCR section 1444, subdivision (c) would establish only that the act was substantially related to a nurse's qualifications, functions or duties. As discussed in Legal Conclusion 4, a substantially related act that does involve a conviction is not a ground to revoke a license.

5. In determining what discipline to impose, the Board, according to the Guidelines, "carefully considers the totality of the facts and circumstances in each individual case, with the safety of the public being paramount." The Guidelines (at p. 12) recommend license revocation for "failure to appear at a disciplinary hearing where the Board has requested revocation." The Accusation (at p. 6, ¶ 1 of the Prayer) requests revocation or suspension, and respondent failed to appear at the hearing. (Factual Finding 2.) For possession of dangerous drugs, the Guidelines recommend a minimum discipline of revocation stayed with three years probation, in cases of first-time offense with documented evidence of an ongoing rehabilitation program. Here there is no evidence of an ongoing rehabilitation program. Respondent is an admitted methamphetamine addict and there is no evidence that she has rehabilitated from that addiction. The only evidence of rehabilitation is that she attended 30 Alcoholics Anonymous meetings to avoid being convicted of a crime (Factual Findings 5 and 6), which is insufficient evidence that she is no longer using methamphetamine, and is insufficient evidence that the public interest can be protected if her license is not revoked.

6. The Board requests investigation and enforcement costs of \$1,997.50 under Business and Professions Code section 125.3.<sup>3</sup> (Accusation, ¶ 13) These costs are found to be reasonable (Factual Finding 7), and the agency may recover these costs under section 125.3.

#### ORDER

The registered nursing license of respondent Terishalen Williams-Johnson, registered nurse license number 607767, is revoked.


If and when respondent's license is reinstated, she shall pay to the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code section 125.3 in the amount of \$1,997.50. Respondent shall be permitted to pay these costs

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<sup>3</sup> Under section 125.3 subdivision (a), "in any...disciplinary proceeding before any board within the [Department of Consumer Affairs], upon request of the entity bringing the proceeding, the administrative law judge may direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case."

in a payment plan approved by the Board. Nothing in this provision shall be construed to prohibit the Board from reducing the amount of cost recovery upon reinstatement of the license.

DATED: September 19, 2012

A handwritten signature in cursive script, appearing to read "Howard Posner", is written above a horizontal line.

HOWARD POSNER  
Administrative Law Judge  
Office of Administrative Hearings

# Exhibit A

Accusation Case No. 2012-473

1 KAMALA D. HARRIS  
Attorney General of California  
2 ALFREDO TERRAZAS  
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7 *Attorneys for Complainant*

8 **BEFORE THE**  
9 **BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. **2012-473**

13 **TERISHALEN R. WILLIAMS-JOHNSON**  
14 **5537 Marburn Ave**  
15 **Los Angeles, CA 90043**

**A C C U S A T I O N**

16 **Registered Nurse License No. 607767**

17 Respondent.

18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her  
21 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department  
22 of Consumer Affairs.

23 2. On or about October 4, 2002, the Board of Registered Nursing (Board) issued  
24 Registered Nurse License No. 607767 to Terishalen R. Williams-Johnson (Respondent). The  
25 Registered Nurse License was in full force and effect at all times relevant to the charges brought  
26 herein and will expire on July 31, 2012, unless renewed.

27 **JURISDICTION**

28 3. This Accusation is brought before the Board under the authority of the following



1 laws. All section references are to the Business and Professions Code unless otherwise indicated.

## 2 STATUTORY PROVISIONS

3 4. Section 118, subdivision (b), of the Code provides that the suspension, expiration,  
4 surrender or cancellation of a license shall not deprive the Board, Registrar or Director of  
5 jurisdiction to proceed with disciplinary action during the period within which the license may be  
6 renewed, restored, reissued or reinstated.

7 5. Section 490 provides, in pertinent part:

8 "(a) In addition to any other action that a board is permitted to take against a licensee, a  
9 board may suspend or revoke a license on the ground that the licensee has been convicted of a  
10 crime, if the crime is substantially related to the qualifications, functions, or duties of the business  
11 or profession for which the license was issued.

12 "(b) Notwithstanding any other provision of law, a board may exercise any authority to  
13 discipline a licensee for conviction of a crime that is independent of the authority granted under  
14 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties  
15 of the business or profession for which the licensee's license was issued.

16 "(c) A conviction within the meaning of this section means a plea or verdict of guilty or a  
17 conviction following a plea of nolo contendere. Any action that a board is permitted to take  
18 following the establishment of a conviction may be taken when the time for appeal has elapsed, or  
19 the judgment of conviction has been affirmed on appeal, or when an order granting probation is  
20 made suspending the imposition of sentence, irrespective of a subsequent order under the  
21 provisions of Section 1203.4 of the Penal Code."

22 6. Section 492 provides, in pertinent part:

23 "Notwithstanding any other provision of law, successful completion of any diversion  
24 program under the Penal Code, or successful completion of an alcohol and drug problem  
25 assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of  
26 Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2  
27 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that  
28 division, from taking disciplinary action against a licensee or from denying a license for

1 professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a  
2 record pertaining to an arrest.

3 "This section shall not be construed to apply to any drug diversion program operated by any  
4 agency established under Division 2 (commencing with Section 500) of this code, or any  
5 initiative act referred to in that division."

6 7. Section 2750 provides, in pertinent part, that the Board may discipline any licensee,  
7 including a licensee holding a temporary or an inactive license, for any reason provided in Article  
8 3 (commencing with section 2750) of the Nursing Practice Act.

9 8. Section 2761 provides, in pertinent part:

10 "The board may take disciplinary action against a certified or licensed nurse or deny an  
11 application for a certificate or license for any of the following:

12 "(a) Unprofessional conduct, which includes, but is not limited to, the following:

13 . . . .

14 "(d) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the  
15 violating of, or conspiring to violate any provision or term of this chapter [the Nursing Practice  
16 Act] or regulations adopted pursuant to it.

17 . . . .

18 "(f) Conviction of a felony or of any offense substantially related to the qualifications,  
19 functions, and duties of a registered nurse, in which event the record of the conviction shall be  
20 conclusive evidence thereof."

21 9. Section 2762 provides, in pertinent part:

22 "In addition to other acts constituting unprofessional conduct within the meaning of this  
23 chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this  
24 chapter to do any of the following:

25 "(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed  
26 physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or  
27 administer to another, any controlled substance as defined in Division 10 (commencing with  
28 Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as

1 defined in Section 4022.

2 . . . .

3 "(c) Be convicted of a criminal offense involving the prescription, consumption, or  
4 self-administration of any of the substances described in subdivisions (a) and (b) of this section,  
5 or the possession of, or falsification of a record pertaining to, the substances described in  
6 subdivision (a) of this section, in which event the record of the conviction is conclusive evidence  
7 thereof."

8 10. Section 2764 provides, in pertinent part, that the expiration of a license shall not  
9 deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or  
10 to render a decision imposing discipline on the license."

11 11. Section 2811, subdivision (b) provides, in pertinent part, that the Board may renew an  
12 expired license at any time within (8) eight years after the expiration.

### 13 **REGULATORY PROVISIONS**

14 12. California Code of Regulations, title 16, section 1444 provides, in pertinent part:  
15 AA conviction or act shall be considered to be substantially related to the qualifications,  
16 functions or duties of a registered nurse if to a substantial degree it evidences the present or  
17 potential unfitness of a registered nurse to practice in a manner consistent with the public health,  
18 safety, or welfare."

### 19 **COST RECOVERY**

20 13. Section 125.3 provides, in pertinent part, that the Board may request the  
21 administrative law judge to direct a licentiate found to have committed a violation or violations of  
22 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
23 enforcement of the case.

### 24 **CONTROLLED SUBSTANCE**

25 14. "Methamphetamine," is a Schedule II controlled substance as designated by Health  
26 and Safety section 11055, subdivision (d)(2) and is categorized as a dangerous drug pursuant to  
27 section 4022.

28 ///

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(An Act Substantially-Related to the Licensure)**

3 15. Respondent is subject to disciplinary action under California Code of Regulations,  
4 title 16, section 1444, in that Respondent committed an act that is substantially related to the  
5 qualifications, functions or duties of a registered nurse which to a substantial degree evidences  
6 her present or potential unfitness to practice in a manner consistent with the public health, safety,  
7 or welfare, as follows:

8 a. On or about September 24, 2010, Respondent was found to be in possession of a  
9 controlled substance, Methamphetamine. Respondent admitted to Pasadena Police Officers that  
10 she possessed a baggie of methamphetamine prior to their arrival. Respondent admitted to using  
11 a straw that was recovered on the floor, to snort methamphetamine the night before. Respondent  
12 also admitted to the officers that she discarded the straw while standing next to them during the  
13 search, and was a methamphetamine addict.

14 **SECOND CAUSE FOR DISCIPLINE**

15 **(Illegal Possession of a Controlled Substance)**

16 16. Respondent is subject to disciplinary action under sections 2761, subdivision (a), and  
17 2762, subdivision (a), on the grounds of unprofessional conduct, in that on or about September  
18 24, 2010, Respondent was found to be in possession of a controlled substance. Complainant  
19 refers to and by this reference incorporates the allegations set forth above in paragraph 15,  
20 subparagraph (a), inclusive, as though set forth fully.

21 **THIRD CAUSE FOR DISCIPLINE**

22 **(Acts Involving Dishonesty, Fraud, and/or Deceit)**

23 17. Respondent is subject to disciplinary action under California Code of Regulations,  
24 title 16, section 1444, in that Respondent committed an act that involved dishonest, fraud, and/or  
25 deceitful acts. Complainant refers to and by this reference incorporates the allegations set forth  
26 above in paragraph 15, subparagraph (a), inclusive, as though set forth fully.

27 ///

28 ///

1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct / Violate Act)**

3 18. Respondent is subject to disciplinary action under sections 2761, subdivision (a) and  
4 (d), on the grounds of unprofessional conduct, in that Respondent committed acts of  
5 unprofessional conduct, and acts that violated the Nursing Practice Act. Complainant refers to  
6 and by this reference incorporates the allegations set forth above in paragraph 15, subparagraph  
7 (a), inclusive, as though set forth fully.

8 **PRAYER**

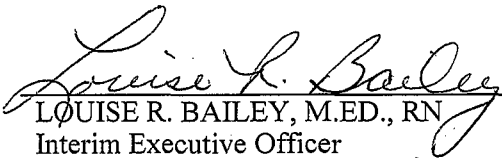
9 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
10 and that following the hearing, the Board of Registered Nursing issue a decision:

11 1. Revoking or suspending Registered Nurse License No. 607767, issued to Terishalen  
12 R. Williams-Johnson;

13 2. Ordering Terishalen R. Williams-Johnson to pay the Board the reasonable costs of the  
14 investigation and enforcement of this case, pursuant to Business and Professions Code section  
15 125.3; and

16 3. Taking such other and further action as deemed necessary and proper.

17  
18 DATED: February 22, 2012

19   
LOUISE R. BAILEY, M.ED., RN  
Interim Executive Officer  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California  
Complainant

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23 accusation.rtf  
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